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UNITED STATES SUPREME COURT

OCTOBER TERM 1942

No. 238

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THELMA MARTIN
Appellant

v.

CITY OF STRUTHERS, OHIO
Appellee

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APPEAL FROM THE SUPREME COURT OF OHIO

APPELLANT'S BRIEF

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Opinions Below

There was no opinion written by the Supreme Court of Ohio. Memorandum dismissing the appeal is reported in —— Ohio ——, and 40 N. E. 2d 154 and also in 14 Ohio Bar Association Reports 735. There was no opinion written by the Court of Appeals of Ohio, but Memorandum thereof appears in —— Ohio —— and 14 Ohio Bar Association Reports 44. The Common Pleas Court did not write an opinion nor did the Mayor's Court of Struthers, Ohio.

Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code [28 U. S. C. 344 (a)].

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 400, 45 Stat. 466, an appeal may be taken in any case which under prior statute could be received as a matter of right on writ of error.

Timeliness

The judgment of the Supreme Court of Ohio was rendered and entered on February 4, 1942. (R. 7-8) The petition for appeal was duly filed, presented and allowed within three months from the date of such final judgment by the Supreme Court of Ohio and is therefore timely. The order allowing appeal was signed by the Chief Justice on May 2, 1942.

The Statute

The legislation, the constitutionality and validity of which as construed and applied to appellant is here drawn in question, is an ordinance of the City of Struthers, Ohio, known as Section 41 of Chapter 21 of Ordinances of the City of Struthers, reading as follows:

> "It is unlawful for any person distributing handbills, circulars or other advertisements to ring the door bell, sound the door knocker, or otherwise summon the inmate or inmates of any residence to the door for the purpose of receiving such handbills, circulars or other advertisements they or any person with them are distributing." R. 1.

Statement

On Sunday, July 7, 1940, the appellant and a number of other of Jehovah's witnesses visited the city of Struthers, Ohio, for the purpose of preaching the gospel from house to house in the distribution of Bible literature. (R. 26-27) After they worked in the city for a short time, the police received a number of calls that people were going about the town knocking on doors and ringing door bells. (R. 24) Several were arrested, including five children. Appellant learned of these arrests as she was calling from house to house. (R. 21) Appellant came to the Swartzlander home in the city and knocked on the screen door (R. 27) and Albert Charles Swartzlander, the son, aged 14, a freshman in high school, came to the door. Appellant asked to speak to his mother, Mrs. Swartzlander, whom the son then called and who came to the door. (R. 19) Appellant had some booklets and other literature in her hand which she offered to leave, but when Mrs. Swartzlander stated that she was not interested, the appellant did not persist in requesting her to take the literature, but then told her that a number of Jehovah's witnesses, her companions, had been arrested and were being detained by the city police because of preaching the gospel from house to house and that since such persons, including five children, had not violated any law, if she was in favor of freedom and in seeing justice administered to all, she should call the chief of police and demand that Jehovah's witnesses be released. Appellant then handed Mrs. Swartzlander a leaflet (City's Exhibit "A") and told her that it was on the subject of religion and had some very timely matters that she would be interested in. (R. 21) The leaflet reads as follows:

"RELIGION as a WORLD REMEDY, The Evidence in Support Thereof. Hear JUDGE RUTHERFORD, Sunday, July 28, 4 P. M., E.S.T. FREE, All Persons of Good-will Welcome, FREE. Columbus Coliseum, Ohio State Fair Grounds. [on one side].

"1940's Event of Paramount Importance TO YOU! What is it? The THEOCRATIC CONVENTION of JEHOVAH'S WITNESSES. Five Days - July 24-28 - Thirty Cities. All Lovers of Righteousness - Welcome! The strange fate threatening all "Christendom" makes it imperative that you COME and HEAR the public address on RELIGION AS A WORLD REMEDY, The Evidence in Support Thereof, by Judge Rutherford at the COLISEUM of the OHIO STATE FAIR GROUNDS, Columbus, Ohio, Sunday, July 28, at 4 p. m., E.S.T. "He that hath an ear to hear" will come to one of the auditoriums of the convention cities listed below, tied in with Columbus by direct wire. Some of the 30 cities are [21 cities listed]. For detailed information concerning these conventions write WATCHTOWER CONVENTION COMMITTEE, 117 Adams St., Brooklyn, N. Y." [on the other side] R. 21.

After appellant had passed the leaflet to Mrs. Swartzlander, she was advised by Mrs. Swartzlander that she was not interested in it. Since Mrs. Swartzlander had the leaflet, appellant turned and went away. R. 27.

Mrs. Swartzlander tore up the leaflet and threw it away. (R. 22) Appellant walked off the porch and down to the sidewalk as a police cruiser car drove up

and stopped. The officer, Landgraft, got out of the car and called to appellant and motioned for her to come over to the police car and got out and approached appellant and told her she was under arrest. (R. 25) She was taken to the station and charged with violation of the foregoing ordinance. (R. 25) Several other of Jehovah's witnesses were arrested in other parts of the city and charged and prosecuted for alleged violation of the foregoing ordinance. R. 21, 27.

History of Proceedings and Federal Questions Raised Below

MAYOR'S COURT PROCEEDINGS

Appellant was charged by complaint filed in the Mayor's Court of the City of Struthers with an alleged violation of the ordinance. (R. 30-31) Among other things it was charged that appellant "did ring the doorbell, sound the door knocker or otherwise summon the inmate of the said residence to the door for the purpose of receiving such handbill and pamphlet which she was distributing". R. 31.

At the close of the evidence, appellant duly presented her motion to dismiss on the grounds that the ordinance was unconstitutional as construed and applied because it denied and deprived her of her rights of freedom of press and freedom to worship Almighty God as an ordained minister in the manner in which she was doing, contrary to the United States Constitution, Fourteenth Amendment, and that the ordinance was void because of the reasons hereinafter set forth. (R. 27-28) For such reason, appellant urged the trial

court to acquit her (R, 27-28) which motion was overruled (R. 29) and the court held the ordinance to be constitutional. (R. 29-30) Thereupon on July 11, 1940 appellant was convicted and found guilty and a fine imposed of $10.00 and costs. (R. 30) Journal entry of the judgment of conviction was duly entered to which appellant excepted. (R. 30) Appellant duly filed her motion for a new trial, which was overruled and to which appellant excepted. R. 14.

COMMON PLEAS COURT PROCEEDINGS

In the time and manner required by law, appellant served and filed her Notice of Appeal to the Court of Common Pleas of Mahoning County. (R. 17) Thereafter appellant filed her Petition in Error with the Court of Common Pleas of Mahoning County, which was docketed as 108455, in which petition in error complaint was duly made as to the ruling of the Mayor's Court of the City of Struthers in holding the ordinance constitutional and convicting appellant. (R. 16) Thereafter the cause was brought on for hearing in the Court of Common Pleas and the judgment rendered on January 20, 1941, at which time the judge filed the following memorandum decision:

> "Hearing: Judgment affirmed at costs of appellant remanded for execution; Exception to defendant-appellant. (The ordinance is a valid exercise of the police power and does not contravene constitutional guarantees.)" R. 15-16.

Thereupon the Court of Common Pleas entered its judgment affirming the conviction as shown in the Journal Entry. R. 16.

Appellant duly filed her motion for new trial, complaining of the ruling of the court, in the manner required by Ohio procedure. (R. 14) Said motion was overruled, to which action the appellant excepted and was allowed by the court the statutory time in which to perfect appeal to the Court of Appeals of Ohio. R. 11.

COURT OF APPEALS PROCEDURE

Appellant duly gave notice of appeal from the judgment rendered by the Court of Common Pleas, which was duly served upon the Clerk and attorney for appellee and duly filed in Court of Common Pleas. R. 13.

Appellant duly filed in the Court of Appeals in the time and manner required by Ohio procedure, her assignments of error, complaining of the rulings of the Mayor's Court and Common Pleas Court in failing to hold the ordinance unconstitutional and void as construed and applied to appellant. R. 12-13.

The Court of Appeals of Ohio duly overruled the assignments of error and affirmed the judgment of conviction and the judgment of the Court of Common Pleas and held that the ordinance was "a valid exercise of the police power and does not contravene the the constitutional guarantees of the defendant-appellant." R. 10-11.

OHIO SUPREME COURT PROCEEDINGS

In the time and manner required by law, appellant served and filed her notice of appeal from the Court of Appeals to the Supreme Court of Ohio and duly perfected her said appeal to Ohio Supreme Court. R. 5, 9.

Appellant duly filed within the time and manner required by law her assignments of error in the Supreme Court of Ohio, duly attacking the validity of the ordinance on the grounds that it was contrary to the Constitutions of the United States and the State of Ohio. R. 8, 9.

On February 4, 1942, the Ohio Supreme Court rendered a judgment as shown by the journal entries and memorandum decision dismissing the appeal because no debatable constitutional question was involved. R. 7.

FEDERAL QUESTIONS PRESENTED, DULY PASSED ON, IN ALL COURTS BELOW

The Ohio Supreme Court, the Court of Appeals of Ohio, the Common Pleas Court and the Mayor's Court of Struthers each duly passed upon each of said federal questions or assignments attacking the validity of the ordinance and each of said courts held it valid and constitutional, both on its face and as applied, and found that appellant was not deprived of her rights of freedom of worship and freedom of press, contrary to the First and Fourteenth Amendments to the United States Constitution. R. 7, 10, 15, 30.

The Ohio Supreme Court sustained the conviction of appellant and affirmed the judgment of the trial court by dismissing the appeal. R. 7-8.

In the petition for appeal and the assignments of error duly filed, appellant complains of the judgment of the Ohio Supreme Court for and on account of each ground set forth in brief filed in said court. R. 1-3.

Specification of Errors to Be Urged

The Ohio Supreme Court committed reversible error in dismissing the appeal, in overruling the assignments of error and in rendering judgment because the court should have held that

(1) The Mayor's Court committed reversible error in denying the motion to dismiss filed at the close of all the evidence because the ordinance as construed and applied abridges and prohibits the exercise by appellant of her freedom to worship Almighty God contrary to the First and Fourteenth Amendments to the United States Constitution.

(2) The Mayor's Court committed reversible error in failing to hold that the ordinance in question is void on its face and as construed and applied because expressly prohibiting distribution of literature at the homes of the people, thereby abridging appellant's rights of freedom of press and speech contrary to the First and Fourteenth Amendments to the United States Constitution.

(3) The Mayor's Court committed reversible error in failing to hold that the ordinance in question is void on its face because in excess of the police power and provides for unreasonable means and methods so as to deny liberty without due process of law, contrary to the Fourteenth Amendment to the United States Constitution.

Points for Argument

ONE

This Court should hold that the ordinance as construed and applied abridges and prohibits exercise by appellant of her freedom to worship Almighty God, contrary to the First and Fourteenth Amendments to the United States Constitution.

TWO

This Court should hold that the ordinance is void on its face and as construed and applied because expressly prohibiting distribution of literature at the homes of the people, thereby abridging appellant's rights of freedom of press and speech, contrary to the First and Fourteenth Amendments to the United States Constitution.

THREE

This Court should hold that the ordinance is void on its face because in excess of the police power and provides for unreasonable means and methods so as to deny liberty without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States.

Summary of Argument

The evidence shows that appellant is a minister of the gospel, and the distribution of the leaflet entitled "Religion as a World Remedy" from house to house, together with the literature which she offered to the householders, was a necessary part of her preaching of the gospel. On its face the ordinance does not abridge freedom of worship but it has been misused and misapplied to the distribution of literature relating to the Bible; and to the extent that it prohibits the distribution thereof to the householder, the ordinance is unconstitutional because abridging the rights of freedom of worship of Almighty God, contrary to the First and Fourteenth Amendments to the United States Constitution. **Cantwell** v. **Connecticut,** 310 U. S. 296. On this point, it is the **application** of the ordinance to the particular facts that makes it unconstitutional. **Concordia Fire Ins. Co. v. Illinois,** 292 U. S. 535,545.

On its face and as construed and applied, the ordinance prohibits and abridges exercise of the fundamental personal rights of freedom of speech and of press by denying to the distributor of literature the right to summon to the door for the purpose of leaving literature, a member of the household in the homes where calls are made in the city. **Schneider** v. **State,** 308 U. S. 147; **Hague** v. **C. I. O.,** 307 U. S. 496; **Lovell** v. **Griffin,** 303 U. S. 444; **Thornhill** v. **Alabama,** 310 U. S. 88; **Carlson** v. **California,** 310 U. S. 106; **Near** v. **Minnesota,** 283 U. S. 697, 707-716.

The ordinance is **prohibitory** in its terms and is NOT regulatory.

There is no way one can distribute literature from house to house without violating the ordinance.

Therefore on its face and as construed and applied the ordinance abridges appellant's rights of freedom of speech and press, contrary to the First and Fourteenth Amendments.

Regardless of the construction and application given the ordinance, the terms thereof provide for arbitrary and unreasonable means that have no relation to the police power. The interests of the state cannot possibly be affected or even remotely interfered with by the summoning to the door of a householder to receive a printed message. It thereby makes unlawful and a nuisance that which is inherently lawful, and no reasonable argument can be advanced in support of the **prohibitory** provisions of the ordinance. **Weaver v. Palmer Bros. Co.,** 270 U. S. 402; **Dobbins v. Los Angeles,** 195 U. S. 223; **Panhandle E. Pipe Line Co. v. State H'way Com'n,** 294 U. S. 613, 622; **Purity Extract Co. v. Lynch,** 226 U. S. 192, 204, Freund's **The Police Power,** page 133.

Insofar as the ordinance is applied to the exercise of a fundamental personal right guaranteed by the First Amendment and secured against abridgment by the state by the Fourteenth Amendment, there is no presumption in favor of the constitutionality of the ordinance. The burden is upon the City of Struthers to establish the constitutionality of the ordinance and that it is directed at an **abuse** of the privileges of freedom of speech, press and worship. **United States v. Carolene Prod. Co.,** 304 U. S. 144, 152.

ARGUMENT

ONE

This Court should hold that the ordinance as construed and applied abridges and prohibits exercise by appellant of her freedom to worship Almighty God, contrary to the First and Fourteenth Amendments to the United States Constitution.

Freedom to worship Almighty God, or to practice any religious principle, or to teach any doctrine, is guaranteed every person in the United States. **Watson v. Jones,** 80 U. S. 679,728. This right cannot be invaded by the state or municipal subdivision thereof through ordinance or statute except when the practice presents a clear, present and immediate danger that the morals of the people, the property rights of others, or the peace and safety of the nation will be invaded. **Cantwell v. Connecticut,** 310 U. S. 296. Even then the law must be directed at the **abuse** of the privilege and cannot be curtailed by general laws prohibiting the exercise of the right itself.

Appellant and other of Jehovah's witnesses were preaching from house to house in the City of Struthers by offering the literature explaining the Bible and by inviting the people to attend the Convention of Jehovah's witnesses to be held in various cities of the United States, with Columbus, Ohio, as the key-city. Appellant believed it was her duty as a minister of the gospel to advertise this important Christian assembly and the Bible talk entitled "Religion as a World Remedy" by means of distributing the leaflet and invitation from house to house. This was her method of preaching the gospel and aiding the Watchtower Bible

and Tract Society and Jehovah's witnesses in further preaching the gospel and advertising the Kingdom of Almighty God as the only hope for deliverance of mankind from disaster.

The courts below have construed the ordinance so as to apply to activity of appellant, and this Court is bound to accept that construction and concede that the ordinance does proscribe the activity of appellant. This Court, however, is not precluded from holding that the Federal constitutional rights have been invaded by the ordinance.

The ordinance does not mention "ministers" calling from house to house and clearly was not intended to include "ministers", but since it has been construed to include the "ordained minister" here involved, the right to preach the gospel has been invaded contrary to the guaranties of freedom of worship in the Constitution of the United States.

In addition to guaranteeing the right to ministers of the Gospel and other Christian workers to call from house to house to bring the message of God's kingdom to the people at their homes, the law and Constitution also guarantees the right to such ministers to call at the people's homes for the purpose of inviting them to attend a Christian assembly and listen to speeches to be delivered on Bible subjects and, specifically, the talk "Religion as a World Remedy", advertised as the highlight of the 1940 nation-wide Convention of Jehovah's witnesses.

It is to be noticed that the record fails to disclose that appellant offered to sell anything or took a contribution. There is no evidence pertaining to or from which it might be inferred that there was a commercial venture of any sort. The leaflet says that the speech is free.

When Jesus instituted Christian worship, the Jews had been in the habit of going up to the mountain at Samaria or to Jerusalem to worship in the temple. He laid down a definite rule and by His course of action and words showed that true worship of God was not confined to temples but consisted in worshiping in spirit and in truth by going from house to house and visiting the people in their homes and there declaring the message of good news of God's kingdom as outlined in the Scriptures. In John 4:23 it is stated that "true worshippers shall worship the Father in spirit and in truth". In Acts 1:8, it is declared that this message shall be declared "unto the uttermost part of the earth". Speaking of the very time through which the nations are now passing—wars, rumors of wars, men's hearts failing them for fear of things coming upon the earth—Jesus specifically instructed His ministers (Matthew 24:14): "And this gospel [good news] of the kingdom shall be preached in all the world for a witness unto all nations; and then shall the end come." The kingdom here mentioned is the THEOCRACY for which Christ Jesus taught all true worshipers of Almighty God to pray (Matthew 6: 9-13) and promised that such Kingdom would be established here on the earth for the blessing of all people of good will toward Almighty God that will be carried through His battle at Armageddon, near at hand.

When Jesus was before Pilate, He emphasized the fact that He was the King of this Theocracy or Kingdom which would be established fully in heaven and in due time fully in the earth and that He came into the world for the purpose of bearing witness to this truth. Jesus said, "For this cause came I into the world, that I should bear witness unto the truth." (John 18:37) His consistent, unbreakable course of action brought upon Him much persecution; His apostles

suffered likewise; and ever since all true Christians have continued to suffer and be persecuted, not for any wrong or misconduct on their part but because they maintain their integrity and keep their faith with Jehovah God and Christ Jesus in spite of all opposition. John 15:20; 2 Timothy 3:12; 1 Peter 4:12-14.

At the time of her arrest appellant was bearing witness to the gospel from house to house. Today it is much more expedient to contact people at their homes and there discuss with them the importance of home Bible study and attending meetings of the sort advertised by appellant by the delivery to the people at their homes the message in printed form so that they can have a permanent record of the matter discussed by Jehovah's witnesses and that they might study the same when Jehovah's witnesses have departed from the house. Thus the message can be read and studied at the householder's convenience.

The ordinance in question prohibits effective distribution of literature from house to house. It curtails circulation and prohibits **proper exercise** of the fundamental inherent right of the citizen to discuss with his neighbor any proposition or matter of importance relating to public affairs in which the citizen may be sufficiently interested to circulate same in writing from house to house.

By this ordinance any minister is denied the privilege of distributing an invitation to attend the Sunday morning sermon.

It cannot be argued that calling from house to house is not a proper way of worship or a proper way of **exercising** freedom to worship.

The record shows that appellant's conduct did not involve a violation of the law of morals, did not infringe the property rights of others and did not imperil or endanger the peace and safety of the city,

state or nation. In the circumstances this field of right practice cannot be invaded.

For approximately six thousand years Jehovah has had faithful witnesses on the earth, all of whom are described in the Bible as Jehovah's witnesses. Since the days of Christ Jesus, Jehovah's witnesses have consistently preached the gospel from house to house and from door to door in the same manner as did the apostles. For the purpose of preaching this gospel of the Kingdom unto all the world as a witness in this modern day or time of the end (Matthew 24:14, Daniel 12:4) the Watch Tower Bible and Tract Society was incorporated and is now used to conduct the work of Jehovah's witnesses in an orderly and businesslike fashion.

For over sixty years Jehovah's witnesses and the Watch Tower Bible and Tract Society have carried on their work from house to house in the United States and throughout the world. Due to totalitarian aggression in the axis-dominated lands such work has been greatly curtailed and impaired by laws banning the activity, making it necessary to carry on in the manner that the persecuted Christians did in the days of Nero. During the past sixty years millions of people have been helped and comforted by this message; thousands would not have received Bible instruction of any kind or character but for Jehovah's witnesses. The fact that the "recognized" churches do not accept the manner of preaching used by Jehovah's witnesses and do not agree with the Bible doctrines contained in the literature published and circulated by Jehovah's witnesses is no basis for stopping or curtailing the circulation. It is by free and unhampered circulation of all opinion and doctrines from house to house and publicly that the people of democratic lands are able to gain a knowledge and make an independent choice.

To promote the circulation of information and opinion relating to Bible matters leads to enlightenment and progress. Most people are born and reared in some sort of church. A large proportion of the people are born or reared in some recognized religion and would not have an opportunity to know whether or not their minds had been blinded to the Truth by the doctrines taught by such recognized religion unless some other person discussed the doctrines and practices of their recognized religion.

"Come now, and let us reason together, saith the LORD." (Isaiah 1:18) There cannot be reason and discussion unless there be contact with the people at their homes. The ordinance in question prohibits personal contact, which is necessary to enlightenment and discussion. One could not determine whether or not a householder was interested, favorable or antagonistic to the message and would not know whether to stay away from the house, unless he could have personal contact with the householder. The ordinance, therefore, quenches the light of Truth and prohibits the discussion of all current problems, political, religious, commercial or any other, and leads to gross darkness and ignorance. House-to-house distribution of literature is PROHIBITED by the ordinance.

The appellee argues that the ordinance is valid because it is limited in its operation to the homes of the people and that it is for the protection of the privacy of the people in their homes. These arguments are not sufficient and do not justify the admitted abridgment of the right to call at the people's homes and to discuss with them the literature or leaflet to be offered to them.

In **Schneider** v. **State**, 308 U. S. 147, this Court held that "the most effective way of bringing them [pamphlets] to the notice of individuals is their dis-

tribution at the homes of the people." [Bracketed word added.]

In the same case, Justice Roberts said that "one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place."

In **Cantwell** v. **Connecticut,** 310 U. S. 296, in disposing of the same argument this Court said: "Equally obvious is it that a state may not unduly suppress communication of views, religious or other, under the guise of conserving desirable conditions." And in **Schneider** v. **State,** supra, the Court said:

> "We are of the opinion that the purpose to keep the streets clean and of good appearance is insufficient to justify an ordinance which prohibits a person rightfully on a public street from handing literature to one willing to receive it. Frauds may be denounced as offenses and punished by law. Trespasses may similarly be forbidden. If it is said that these means are less efficient and convenient than bestowal of power on police authorities to decide what information may be disseminated from house to house, and who may impart the information, the answer is that considerations of this sort do not empower a municipality to abridge freedom of speech and press."

The ordinance does not secure to the citizens their privacy. It imprisons them by keeping away from them the distributor of a message of benefit and mutual interest. The Ohio trespass statutes are sufficient to protect the householder in the event the caller enters when ordered not to do so or refuses to leave after being requested to do so. No such circum-

stances exist in this case. There is no need for invasion of the householder's right to determine for himself in every case, as it arises, whether the particular visitor or his message is or is not desired after the resident has had an opportunity to consider and decide. It is time enough for the city to intervene when an actual trespass is discerned and committed and not before. **The law in question is totalitarian.** It blinds the people by keeping from them messages and news concerning the real danger that threatens them and all other Americans as warned by appellant in the leaflet distributed without price.

The police power of the City of Struthers is not above the Constitution, the provisions of which the courts will invoke to protect the rights of individual citizens and residents and others from an invasion of their civil rights under the guise of police measures.

The ordinance does not have for its real purpose the prevention of trespass. The act of trespass is not prohibited. One can trespass without violating the law. The ordinance has erected around each house in the city a spike fence and wall which would exclude a neighbor or fellow citizen from calling upon the residents to discuss an important subject and leave with the resident beneficial literature.

The ordinance prohibits clergymen, ministers, rabbis and priests from calling from house to house to invite a person to attend any sort of a religious service.

The Supreme Court of Louisiana, in disposing of a question similar to that with which the Court is now confronted, said, in **City of Shreveport** v. **Amos Teague,** 8 S. 2d 640:

> "To hold otherwise, we would be compelled to attribute to the City Council of Shreveport the intention of declaring that the visitation into

homes (without previous invitations) by priests and ministers of all denominations, accompanied by the sale of Biblical literature, constitutes a nuisance and a misdemeanor. This we will not do."

From the foregoing it can be seen that the preaching done by appellant requires that she discuss with the householders and contact the residents with reference to the matter distributed, particularly the pamphlets she was distributing among the people. If it is made unlawful to summon a person to the door to receive the printed message, how could appellant know whether the persons were interested or not? If denied that right to call the people to the door, it would require leaving the literature and calling back at a later date, which would double the inconvenience of the parties that could easily be spared by a contact with the householder and discussion on the first visit.

The ordinance deprives householders of their inherent personal rights to determine whether or not they will receive from distributors of literature, pamphlets or other literature, which are and rightly can be offered from house to house. The individual distributors have a vital message to deliver to the residents of the city. If they can not discuss with the residents the literature until after it has been delivered, it is necessary that a call be made in person or by telephone. Are we to expect that the distributor of literature must make a telephone list of all the residents of each street where he delivers literature and then telephone each individual or call back in person upon each individual resident in an attempt to determine whether or not the resident is interested in the literature? This would impose an impossible burden upon the disseminator of ideas. It would also place a very burdensome duty upon the householder. It would

require the leaving of literature at every home whether desired or not and would become a greater burden than the summoning of the householder in the first instance.

The ordinance makes the activity completely impractical and effectively deprives the pamphleteer and like disseminator of ideas of all right to distribute literature. The ordinance therefore places the cart before the horse.

The ordinance PROHIBITS outright the dissemination of Christian pamphlets. In **Cantwell** v. **Connecticut,** supra, Mr. Justice Roberts, speaking for this Court, said: "No one would contest the proposition that a state may not, by statute, wholly deny the right to preach or to disseminate religious views."

The basis for the decisions below was the claim that the ordinance protects the **privacy** of the residents. Viewing the matter now from the **standpoint of each resident,** it is far more important that civil rights of the people of Struthers, Ohio, be preserved than to take such extravagant and unreasonable steps to 'protect the privacy' of the inhabitants of the city. The inhabitants have a civil right in this case in that they are the recipients of the literature distributed. The householders' right to **receive** is equally as important as the distributors' right to **deliver** pamphlets containing information and opinion. The inconvenience of answering the door is not justification for denial of constitutional rights. **Schneider** v. **State,** supra.

The ordinance cuts off from the distributor his main, if not sole, avenue of communication of information and opinion and invitation to attend Bible meetings and hear Bible discourses, i. e., to the homes of the people. He is denied more interested persons for want of contact. The ordinance cuts off the necessary

democratic, social intercourse among people, and thereby makes it dangerous for one citizen to call upon and visit his neighbor for such lawful and proper purposes.

The ordinance is therefore unconstitutional because abridging the right of freedom of worship.

TWO

This Court should hold that the ordinance is void on its face and as construed and applied because expressly prohibiting distribution of literature at the homes of the people, thereby abridging appellant's rights of freedom of press and speech, contrary to the First and Fourteenth Amendments to the United States Constitution.

This Court has definitely held that house-to-house dissemination of information and opinion is proper and necessary. **Schneider** v. **State,** 308 U. S. 147. This Court is not called upon to determine whether or not the appellant has violated the trespass laws of the City of Struthers, Ohio, or of the State of Ohio. The undisputed evidence is that she was **not a trespasser** and did not violate the rights of any householder. If, in an isolated case, the law of trespass is violated by the distributor of literature, that is, by abusing his right of freedom of press by trespassing upon private property either by refusing to leave when requested to do so or intruding in the house of an individual contrary to request not to enter, such offenses can be dealt with under the trespass laws which could be enforced without violating the fundamental rights. It is not proper and necessary to prohibit the exercise of the right in order to prevent trespasses.

Whether this type of ordinance is valid when applied to commercial peddling and canvassing for ordinary articles of merchandise, or commercial advertising of ordinary articles of goods, wares and merchandise, is not necessary for this Court to decide in the instant case. The rule announced in the case of **Valentine** v. **Chrestensen,** 316 U. S. 52, does not apply, for here there is not involved any commercial advertisement of any kind or character.

The ordinance cannot be sustained because it relates to summoning to the door the householder. The act of calling the householder to the door is a necessary part of distribution and circulation and without such there can be no effective distribution and circulation. This Court has held that the "Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value". (**Ex parte Jackson,** 96 U. S. 727,733) Such rule was affirmed by this Court in **Lovell** v. **Griffin,** 303 U. S. 444, and in **Schneider** v. **State,** supra.

In accord with the principle of unrestricted distribution of literature announced in those cases, all must realize that a democratic system of government cannot exist and enlightenment in any avenue of human activity cannot be had unless the free discussion and circulation of opinion and information at the homes of the people be left free and unhampered by any sort of law. When the people are correctly informed and any change in government, in science, in art or manner of worship is necessary, either collectively or individually, the desired results are brought about PEACEABLY. If freedom of expression is shackled, it leads to OPEN VIOLENCE and BLOODSHED as the Russian and French Revolutions abundantly attest. When the people are deprived of knowledge and the

truth is distorted, they become the easy prey of deception, tyranny and abject servitude, examples of which are found in the modern dictatorships of Mussolini, of Stalin, and of Goering, Goebbels and Hitler. Suppression and distortion of opinions, including the Truth of the Bible, is the path that leads to totalitarianism. During the "dark ages" the censorship of religious ideas prevailed, the people were held in ignorance. Anyone who did not agree with Rome was excommunicated, a person who read the Bible was branded as a heretic. Those were the days of the fiery stake, the rack and the bloody inquisition. When censorship and oppression were on the throne, the people suffered and freedom was gained only by violence, open revolt and a long series of religious wars which drenched the continent of Europe. The American colonists learned the lesson of the priceless value of freedom.

Why is there such a reaction by a city of this sort against freedom of the press? The answer and the reason is the same as existed by reason of certain reactionary moves of oppression throughout the centuries past: The party in power does not like **the message.** The founder of the Holy Roman Empire did not like the publication of the early reformers, Luther, Huss and Wycliff, because such explanations of the Bible hurt and destroyed and dried up the religious fields of that organization. The reactionary move against such liberal reformation movement was the banning of the Bible and Bible literature. Later in 1712, Queen Anne of England urged a tax upon all newspapers and printing to choke the information about the government and to prevent them from reaching the people. Even today the reactionary anti-democratic element curse the public press, freedom of

press, freedom of worship and the constitutional liberties of their enemies and those whom they hate and would speedily deny the right of freedom of press, speech and of worship of such persons. Censorship and other means of repressing circulation of information have ever been the methods of tyrants and the path to dictatorship, oppression and ruin. Witness Nazi Germany and other Axis-dominated lands.

These measures are foisted upon the people in a **time of national emergency** when hysteria seeks an avenue of change and revolution, when the people's minds are turned to seemingly more important matters. In **such times** there is even greater reason to use every legal precaution to PRESERVE inviolate the fundamental rights of the people. In **De Jonge** v. **Oregon**, 299 U. S. 353, Mr. Justice Hughes said:

> "These rights may be abused by using speech or press or assembly in order to incite violence and crime. The people through their legislatures may protect themselves against that abuse. But the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed. The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that change, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government."

There is no presumption that the ordinance is constitutional.

When, as here, there is involved the **application** of an ordinance of this sort to the **exercise** of fundamental personal rights guaranteed against abridgment by the First Amendment, and there is no showing of an abuse of the rights, the legislative declaration of the state or city must yield to the stronger and express provision of the First Amendment. See **United States** v. **Carolene Products Co.**, 304 U. S. 144, 152; **Stromberg** v. **California**, 283 U. S. 359; also, **Lovell** v. **Griffin**, supra; **Schneider** v. **State**, supra, in which latter case Mr. Justice Roberts said:

> "Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions."

See also **Hannan** v. **Haverhill** (CCA-1) 120 F. 2d 87, holding to the same effect:

> "Restrictions properly applicable to hawkers and peddlers selling ordinary articles of merchandise on the streets might not be appropriate to regulate the sale and distribution of literature of the sort offered for sale by the plaintiffs."

In **Herndon** v. **Lowry**, 301 U. S. 242, this Court said:

> "The judgment of the legislature is not unfettered. The limitation upon individual liberty must have appropriate relation to the safety of the state. Legislation which goes beyond this need violates the principles of the Constitution."

There must be a showing that there is a clear, immediate and present danger that some right which the state is allowed to protect has been or will be invaded unless the legislation is sustained and enforced. **Bridges** v. **California,** 314 U. S. 252.

Even under the doctrine of **Jones** v. **Opelika,** 316 U. S. 584, the ordinance is admittedly unconstitutional and void because it is absolutely PROHIBITORY and is NOT regulatory. The **Jones** v. **Opelika** majority opinion said: "Ordinances absolutely prohibiting the exercise of this right to disseminate information are, **a fortiori,** invalid." Here we rely upon **Hague** v. **C. I. O.,** 307 U. S. 496, 501, 518, as authority. There this Court held unconstitutional the Jersey City ordinance which forbade any person in the city "to distribute or cause to be distributed or strewn about any street or public place any newspaper, paper, periodical, book, magazine, circular, card, or pamphlet." It was so declared because the ordinance was an abridgment of freedoms of assembly, speech and press.

In the courts below the appellee relied upon the case of **San Francisco News Co.** v. **City of South San Francisco,** 69 F. 2d 879, 886. The Struthers ordinance is not similar to the one of South San Francisco involved in that case. The Struthers ordinance actually **does forbid manual delivery** of publications by carrier to a member of the household. Therefore the basis for holding the South San Francisco ordinance valid does not apply here. Such is not in point. There the Circuit Court of Appeals said:

> ". . . The ordinance does not forbid the manual delivery of the publication by the carrier to a member of the household . . ."

Here no claim or intimation is made that appellant **forced** her message on anyone. If it can be considered

as **forcing**, then every United States postman in the country is guilty of **forcing** himself upon others in their homes and **invading their privacy**; and such is equally true of every **Western Union** messenger boy in the country; where either the postman or the messenger must hand the message personally to the householder.

In absence of any evidence in the record tending to show that appellant was disorderly, offensive, or a trespasser, it cannot be said that the simple act of summoning to the door and handing the householder the printed leaflet inviting the householder to a meeting at which will be discussed a topic of interest to one and all constituted a nuisance warranting conviction under the ordinance. The ordinance is manifestly an invasion of appellant's constitutional right of freedom of the press.

A Chicago ordinance, for instance, which banned the distribution of handbills except by putting them under doors and in letter boxes and prohibited the ringing of any bell on the premises, was held by the court to be invalid, as an unreasonable interference with private rights, in **Chicago** v. **Schultz**, 341 Ill. 208, 173 N. E. 276. The court cited with approval the case of **People** v. **Armstrong**, 73 Mich. 288, 41 N. W. 275, which had held a handbill ordinance invalid on the ground that it was unreasonable if it included in its prohibition the circulating of an "invitation to a moral and Christian assembly of people gathered together for the public good."

It is obvious that to prohibit appellant from calling the inmate of any residence to the door for the purpose of receiving the printed leaflets is to hamper and restrict materially the distribution, because it leaves no practicable means of contact with the householders

at their homes. Without personal contact, there can be no practical way to make certain that the leaflets will ever reach intended recipients who may be willing to receive them; and all opportunity is lost to engage in oral conversation in connection with the distribution.

It is no answer to say that distribution is not materially interfered with because appellant could still leave the leaflets on the porch or elsewhere on the premises without disturbing the occupants. If the ordinance is valid as enforced against appellant, then so would be an ordinance **prohibiting** distribution by leaving on the porch or elsewhere on the premises, and thus, piecemeal, all practicable means of distribution at residences could be destroyed.

Cf. **Bohnke** v. **People**, No. 1005 Oct. T. 1941, certiorari denied, 316 U. S. 667, 62 S. Ct. 1034; rehearing denied, 316 U. S. 713, 62 S. Ct. 1306.

The ordinance encourages littering and scattering of literature and discourages the lawful and proper distribution of literature, i. e., handing and delivery of same from distributor to recipient.

The ordinance penalizes one who desires and endeavors to distribute or disseminate information openly, the "right way".

There is no question of distribution of commercial advertisement as was involved in the case of **Valentine** v. **Chrestensen**, supra.

This case is within the rule announced and laid down in **Donley** v. **City of Colorado Springs**, 40 F. Supp. 15, where the "Green River" ordinance under which Jehovah's witnesses had been convicted and was held inapplicable to their preaching the Gospel and the case of **Green River** v. **Fuller Brush Co.**, 65 F. 2d 112, was clearly distinguished. To the same effect is **Zim-**

mermann v. **London, Ohio,** 38 F. Supp. 582, 584, which also involved Jehovah's witnesses, and where United States District Judge Underwood said:

> "In the case now before this Court, the ordinance imposes no censorship upon the 'free and unhampered distribution of pamphlets'; it imposes what amounts to a **virtual prohibition** upon such distribution . . . Certainly there is no prospect under the ordinance for the 'free and unhampered distribution of pamphlets' as envisioned by the Supreme Court . . ." **[Bold Face** added].

The ordinance is not regulatory but is **prohibitory.** As long as one does not ring a door bell or knock on a door he is permitted to make a nuisance of himself at all hours of the day or night and at all places.

The ordinance also makes unlawful the ringing of a door bell or knocking on a door by a person who is invited on the premises by the householder for the purpose of leaving literature containing information and opinion.

The ordinance here under examination, if allowed the construction and application given it by the lower courts, absolutely prohibits the summoning of one to the door of any residence for the purpose of receiving any handbill, circular or other advertisement, and this without restriction as to time, manner, circumstances, or character of the information contained in the printed matter; and without regard to the willingness or desire of the householder. It forbids even that which the householder permits or invites. It makes no attempt to differentiate between persons who conduct themselves properly and those who do not. Such ordinance is not regulatory but is preventive, PROHIBITIVE, as against an act of the appellant which

is in itself innocent, and which is neither a public nuisance nor a trespass, but in fact **beneficial**, proper.

Therefore we suggest that the ordinance is void on its face and as construed and applied because prohibiting circulation and distribution and thus abridging the right of freedom of press, contrary to the First and Fourteenth Amendments to the United States Constitution. **Thornhill** v. **Alabama**, 310 U. S. 88; **Carlson** v. **California**, 310 U. S. 106; **Lovell** v. **Griffin**, supra; **Schneider** v. **State**, supra; **Cantwell** v. **Connecticut**, supra; **Hague** v. **C. I. O.**, supra.

The ordinance penalizes the house-to-house distributor of literature and makes it unlawful to summon the householder. The ordinance thus destroys circulation and distribution.

Although the city of Struthers may regulate peddlers of merchandise, such authority does not permit the municipality to **prohibit** activities that are expressly protected by constitutional guaranties. The ordinance is therefore unconstitutional because impairing the rights of freedom of speech and press.

THREE

This Court should hold that the ordinance is void on its face because in excess of the police power and provides for unreasonable means and methods so as to deny liberty without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States.

The undisputed evidence and findings of the courts below show that appellant was not a "trespasser" within the meaning of that term, and that she was a **licensee**, or implied **invitee**, because of the fact that she

was calling at the people's homes, presenting to each householder opportunity to consider a subject in which the distributor (appellant) and the householders individually had a mutual interest.

Appellant is an **invitee** because she entered upon the premises of the people's homes to present a message for the benefit of all the residents. The message related to a subject matter in which every householder and appellant had a mutual interest. The subject matter shows that it is of public convenience, interest and necessity to have a revelation from the Bible as to whether or not religion is a world remedy for the present evils now suffered by those of the world. Being for the people's benefit to obtain such information, it is presumed that all residents of good will toward Almighty God would gladly receive the information. Until each householder demonstrated to appellant that he was not interested, the mutuality of interest can be presumed because the very ~~nature~~ of the message presumed such an interest. This presumption of mutuality of interest and the fact that appellant was an **invitee** or **licensee** could not be overcome until after the householder had demonstrated his lack of interest or disapproval which could not be determined until after the householder was summoned to the door.

There is no evidence that appellant was requested to leave the premises and refused to do so. It is not contended that she acted in an inappropriate manner. The conviction was based upon the construction of the ordinance by the courts below.

For more than half a century last past the custom has been recognized and sanctioned by law that householders have the privilege and right to install and use the electric door bell, and various callers are protected in the use of the same. It is an established fact that for centuries people have placed mechanical knockers

and other devices on the doors of their homes for the very purpose of summoning the inmates to the door when a legitimate caller, who had not been previously advised to stay away, had need to announce his presence.[1] From time immemorial the **knock** at the door, when not used to breach the peace, has been a legitimate means of summoning the inmates to the door for purposes of intercommunication; e. g., "Behold, I [the Lord Jesus Christ] stand at the door, and knock: if any man hear my voice, and open the door, I will come in to him, and will sup with him, and he with me." (Revelation 3:20) "Knock, and it shall be opened unto you." (Matthew 7:7; Luke 11:9) See, also, Acts 12:13-16; Luke 12:36; 13:25; Canticles 5:2; cf. Genesis 18:1-6 and Hebrews 13:2; Acts 5:42; 20:20.

The knock at the door, mechanical knocker, manual and electric door bell or chimes, and the visible **approach** of a visitor or messenger to the home of another bespeak a private right **jointly and mutually shared** by both householder and caller, long established by custom and recognized by law. These are all conveniences for the purpose of effecting legitimate and mutually beneficial intercommunication of caller and resident.

The calling at the residences of the people is a private right and unless the householder has previously made known that callers are not wanted, the municipality has no power to interfere with this private right. Such private right cannot be arbitrarily outlawed by a capricious calling ordinance, without

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1 "Open, lock,
Whoever knocks!"—**Macbeth**, Act iii, Sc. 4, William Shakespeare (1564-1616).

"Shut, shut the door, good John! fatigued, I said;
Tie up the knocker! say I'm sick, I'm dead."—**Epistle to Dr. Arbuthnot: Prologue to the Satires**, Alexander Pope (1688-1744).

reasonable grounds; and especially when there is no connection in doing so on the grounds of protecting the public health, safety and welfare. On this very point the law writers of this Nation are in accord. We here quote from a recent decision, **City of Mount Sterling** v. **Donaldson Baking Co.**, 287 Ky. 781, 155 S. W. 2d 237 (October 17, 1941):

> "We can see no connection between the health, morals, security and general welfare of the citizens of Mount Sterling which the ordinance was purportedly enacted to protect, and the orderly solicitation on private premises conducted by persons in good health in an inoffensive manner asking householders to extend an invitation to the company for the salesmen and trucks to call at their residences for the purpose of selling and delivering bakery products. We regard the ordinance as unreasonable, arbitrary and unrelated to the protection of the citizens of Mount Sterling. In writing on the law of torts Judge Cooley said:
>
> > " 'No doubt one may visit at another's place of business for no other motive than curiosity, without incurring liability, unless he is warned away by placard or otherwise. So every man, by implication, invites others to come to his house as they may have proper occasion, either of business, or courtesy, for information, etc. Custom must determine in these cases what the limit is of the implied invitation.' 2 Cooley, Torts, 4th Ed., 238, Section 248. '
>
> "We agree with what was written in Prior v. White, 132 Fla. 1, 180 S. 347, 116 ALR 1176, that where a householder does not externally manifest in some way his desire not to be molested by solici-

tors, the latter may take custom and usage as implying consent to call (where such custom and usage exists), and that an ordinance declaring solicitation without invitation to be a nuisance and punishable as such cannot be upheld as a proper exercise of police power. We cannot agree with the reasoning expressed in Town of Green River v. Fuller Brush Co., 10 Cir., 65 F. 2d 112, 89 ALR 177, that the ringing of door bells of private residences by itinerant vendors and solicitors is in fact a nuisance to the occupants of homes. It is difficult to understand how ringing a door bell of a private residence one time by a solicitor could be a public nuisance and subject the perpetrator to a fine. If such be a nuisance, it would only annoy the householder whose door bell was rung and not annoy the general public. In Petroleum Ref'g Co. v. Com., 102 Ky. 272, 232 S. W. 421, 423, we defined "nuisance" thus:

> "'A nuisance is public where it affects the rights enjoyed by citizens as part of the public, that is, the right to which every citizen is entitled, whereas a private nuisance is anything done to the hurt, annoyance, or detriment of the lands, tenements, or hereditaments of another.' Also see 46 C. J., Section 3, pages 646-648."

The ordinance in question does not prohibit trespassing. Even a trespasser could not be convicted so long as he did not ring a door bell or knock on the door. The act of calling from house to house is a lawful practice and cannot be prohibited. The act of distributing literature from house to house is exercise of a right guaranteed by the Constitution and cannot be infringed unduly by any law. The act of going from

house to house is not a nuisance and does not constitute trespass. **Borchert** v. **City of Ranger** (Texas), **et al.** 42 F. Supp. 577 (ordinance of Ranger, Texas); **Widle** v. **Harrison** (Arkansas) **et al.**, (unreported decree by United States District Court for Western District of Arkansas, January 9, 1941; **Donley** v. **Colorado Springs**, supra; **Zimmermann** v. **London** (Ohio), supra; **City of Columbia** (S. C.) v. **Alexander**, 119 S. E. 241; **Real Silk Hosiery Mills** v. **City of Richmond, Calif.**, 298 F. 126; **Ex parte Maynard**, 275 S. W. 1071; **City of Orangeburg** v. **Farmer**, 181 S. C. 143, 186 S. E. 783; **Jewel Tea Co.** v. **Town of Bel Air**, 172 Md. 536, 192 A. 417; **Prior** v. **White**, 180 So. 347, 132 Fla. 1; **White** v. **Town of Culpeper**, 172 Va. 630, 1 S. E. 2d 269; **New Jersey Good Humor, Inc.** v. **Bd. of Comm.**, 11 A. 2d 113, 114; **City of McAlester** (Okla.) v. **Grand Union Tea Co.**, 98 P. 2d 924; **De Berry** v. **City of LaGrange**, 62 Ga. App. 74, 8 S. E. 2d 147; **Jewel Tea Co.** v. **City of Geneva, Nebr.**, 291 N. W. 664; **Hague** v. **C. I. O. et al.**, 101 F. 2d 774, 307 U. S. 496; **Shreveport** v. **Teague**, 8 So. 2d 640; **Ex parte Faulkner**, 158 S. W. 2d 525.

The ordinance suggests littering and scattering of literature, rather than proper distribution thereof by handing to the householder. The best and most effective way of distributing pamphlets is at the homes of the people. **Schneider** v. **State**, 308 U. S. 147. This ordinance is a prohibition outright and makes a nullity of that right of distribution.

The appellee admits the right to distribute literature but makes unlawful the only lawful and legal means of so distributing it.

Invalidity of the ordinance is manifest in the fact that one can go upon the porch of another and scatter

literature about unlawfully and not be prosecuted under the ordinance unless he rings a door bell or knocks at a door. The ordinance is manifestly unlawful.

The courts have held that the legislature cannot make unlawful that which is inherently lawful and right when no justification therefor is shown. Free movement of the people **for right purposes** should not be hampered or destroyed, as this ordinance does. One's status of 'implied invitee or licensee' cannot be destroyed by legislative fiat without express consent of the persons involved, as is done in this case.

It is true that a man's home is his castle. This ancient rule of the common law has, however, been greatly modified in recent times. As Mr. Justice Holmes has said (**McKee** v. **Gratz**, 260 U. S. 127), "A license [to enter] may be implied from the habits of the country." "A license may be implied to enter the house of another, at usual and reasonable hours, and in a customary manner, for any of the common purposes of life." (37 C. J. 283) The path up to the door of a man's house, the absence of gate or other bar, the steps to the porch and the doorbell or knocker are all in themselves and in accordance with use and wont implied invitations to approach. The man who stands on the porch under such circumstances is not a trespasser under well-established law, but a **licensee.** (See **Stacy** v. **Shapiro**, 212 App. Div. 723; 209 N. Y. S. 305) **And in the case at bar, be it noted, appellant was not even seeking entry to the house but merely sought to speak to householders or to leave leaflets with the householders.**

The ordinance here deprives the householders of their inherent personal right to recognize and receive

at their doors any person who distributes literature.

There is no rational connection between the means employed and the end aimed at by the ordinance. The police power, relied upon by appellee, has its limitations recognized by this Court, when confronted with the barrier of constitutional protection of the rights of freedom of worship and of press. The principle here contended for is well stated in Freund's work on "The Police Power" (page 133, section 143), where it is said:

> "The questions which present themselves in the examination of a safety or health measure are: does a danger exist? is it of sufficient magnitude? does it concern the public? does the proposed measure tend to remove it? is the restraint or requirement in proportion to the danger? is it possible to secure the object sought without impairing essential rights and principles? does the choice of a particular measure show that some other interest than safety or health was the actual motive of legislation?"

The ordinance makes no distinction whatever as to one who is on the property as an invitee, or trespasser: It absolutely prohibits, outright, the inoffensive and lawful act of ringing the doorbell or knocking on the door, regardless of the purpose of the visit. The messenger boy making a call, the postman finding it necessary to deliver mail into the hands of the householder, or the minister calling on a member of his church would violate the ordinance and subject himself to conviction if he were to knock on the door or ring the doorbell announcing his arrival and seeking to deliver any kind of literature.

Conclusion

A review of the facts and law reveals that there is no reason or logic to deprive the people of their rights to receive literature at their homes. **This ordinance is a trick and a cunning device** that attempts to interfere with the ordinary and lawful communication of opinion and knowledge at the homes of the people. Unhampered dissemination of opinion and the right to receive it at the homes, when held inviolate, assure the continuation of progress and democratic institutions. It is manifest that the ordinance seeks to destroy a long-established and time-honored custom of summoning the householder to the door. That which is reasonable and lawful the City of Struthers has no right to declare unlawful and a nuisance. The ordinance is out of accord with the general custom, practice and law of the land and works confusion in the relationship of individuals and neighbors and is not within the scope of the reasonable police power of the state.

It is therefore respectfully submitted that the judgment of the court below should be reversed and the cause remanded with instructions to dismiss the complaint and that appellant be awarded all costs incurred.

Respectfully submitted,

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